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ABSTRACT

This Digest overviews legal challenges in five areas of test use for decision-making in schools: ability tracking, placement in special education classes, test scores as college admissions criteria, test disclosure, and teacher competency testing. Cases illustrating these challenges are described and include: Hobson v. Hansen (1967), Moses v. Washington Parish School Board (1971), Larry P. v. Riles (1972), Parents in Action on Special Education v. Hannon (1980), Diana v. California State Board of Education (1970) and Bakke v. Regents of the University of California (1976). In general, cases have been decided based on the specific circumstances of each case, and revolve around the validity of the test for a specific use. Many cases concern issues of racial, cultural, or linguistic biases in the tests themselves. (BS)

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ERIC/TME Update

LEGAL ISSUES IN TESTING

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LEGAL ISSUES IN TESTING

Standardized tests are often used as a mechanism of social control. "If a decision-maker can point to the results of an objective and valid test as the inofrmation on which a control decision was based, those being controlled are more likely to accept and internalize the decision and its consequences." Tests as a social control mechanism are "open to criticism in proportion to the extent to which those being controlled perceive it as irrational, capricious, arbitrary, or unjust" (see Nitko, p. 39, for a more thorough discussion of these issues).

Legal challenges to the use of tests for decision-making in schools have been brought to the courts. They have focused on six general areas of test use: ability tracking, placement in special education classes, test scores as school admissions criteria, test disclosure, teacher competency testing, and minimum competency testing. Cases illustrating legal challenges to the first five of these areas are described in this digest (the legal issues surrounding minimum competency testing are discussed in a separate digest). In general, the application of specific laws to claims of inappropriate test use is unclear; instead, the cases have been decided based on the specific circumstances of each case.

ABILITY TRACKING

Many cases have been based on the charge that tests have caused the disproportionate placement of minority students in lower ability tracks. The cases are usually based on the argument that the tests are biased against the lower scoring group or that they reflect the effects of past segregation in the schools. The plaintiffs argue that use of the test denies them access to certain programs or to certification of some kind.

Court desisions have upheld these arguments to some extent. In Hobson v. Hansen (1967), it was ruled that the IQ tests used to track students were culturally biased because they were standardized on a white, middle-class sample. It was ruled that these tests were inaccurate for lower-class and black students, and the court abolished the tracking system used in the District of Columbia. Later appeals allowed other forms of ability grouping, but would not allow the use of tests that had racially discriminatory consequences.

The use of achievement tests instead of IQ tests may not be any more appropriate. Moses v. Washington Parish School Board (1971) involved the use of both IQ and achievement tests. The IQ test scores were used for special education placement; the achievement test scores were used for later tracking. The case was also somewhat unique because it involved a recently-desegregated school. The courts ruled against test use for tracking under these circumstances.

SPECIAL EDUCATION PLACEMENT

The arguments against the use of tests for special education placement decisions are the same as those against the use of tests for tracking. In addition, the plaintiffs frequently argue that using a test to label a person is illegal because its results in stigmatizing that person.

The best-known case focusing on special education placement is Larry P. v. Riles (1972). IQ tests were being used to place students in EMR classes. The defense argued that racial imbalance in the EMR classes was not the result of test scores, since parental consent for placement was required. The court decided that the parents would also be influenced by the test scores, and was not sympathetic to the defense's argument that there was no better alternative.

In later appeals, test validity became an important issue, and the court set standards for validity: the same pattern of scores must appear in different subgroups, the mean score should be the same for different subgroups, and the results should correlate with relevant criterion measures. Though experts argued that these standards were not psychometrically sound, the court found that the racial differences in test scores were due to cultural bias in the tests.

The Larry P. decision was rejected as a precedent by Judge Grady in Parents in Action on Special Education (PASE) v. Hannon (1980). In this case, IQ tests were being used for placement of students in EMR classes in the Chicago schools. The plaintiffs argued that the tests were culturally biased, so Judge Grady personally reviewed each item and found only nine which he considered biased. Since other criteria were also used for placement and many of the school psychologists were black, Grady found for the defendants.

Linguistic bias in the IQ tests used to place students in special education classes has also been the basis of legal challenges. One case of this type (Diana v. California State Board of Education, 1970) never actually came to court. Research indicated that, on the IQ tests used for placement in EMR classes, Mexican-Americans gained 15 points if they were allowed to respond in Spanish. The consent decree allowed non-Anglo children to choose the language in which they would respond, banned the use of verbal sections of the test, and required state psychologists to develop an IQ test appropriate for Mexican-Americans and other non-English-speaking students. Soon after, the California state legislature passed a law requiring that test scores used for placement must be substantiated through an evaluation of the student's developmental history, cultural background, and academic achievement.

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TESTS MEASUREMENT EVALUATION

SCHOOL ADMISSIONS

Test scores are frequently used as one piece of information in a school's decision about whether to admit a specific student. In Bakke v. Regents of the University of California (1976), test scores were used as evidence, but the validity of the tests being used was not challenged. Instead, the case focused on the admissions procedures at the UC-Davis Medical School, where 16% of the admissions openings were reserved for disadvantaged students. Many students admitted under this policy had lower undergraduate grade point averages and test scores than regular admittees. Bakke argued that the special admissions policy was discriminatory against White applicants because race was one criterion for disadvantagement.

TEST DISCLOSURE

Many test-takers or interested parties may want to know the content of the test. For example, parents may want to examine contents of the IQ test used to place their child in a special education class, or a college applicant may want to examine the items of a college entrance exam. Most arguments for test content disclosure begin with the Family Education Rights and Privacy Act (1974). It allows parents and eligible students access to their education records and an opportunity to challenge those records, including the test protocols used for placement of students.

In 1980, New York passed a Truth-in-Testing bill covering college admissions tests, among others. Proponents of the bill argued that it would humanize the admissions process, equalize opportunities for minorities, and ensure the accountability of test publishers. Opponents argued that the administration of secure tests minimizes costs to test-takers, prevents unevenness across admission directors, and protects test score validity. Though a similar national bill was introduced, it was not passed and further legislation in this direction seems unlikely in the near future.

TEACHER COMPETENCY TESTING

Legal issues related to teacher testing are similar to those in occupational testing in general. States or school districts must be able to demonstrate that a test is valid for the purpose for which it is being used. The example of the use of the National Teacher Examinations (NTE) for certification and promotion in South Carolina can be used to illustrate these issues. Use of the NTE was challenged by the National Education Association, the South Carolina Education Association, and the U.S. Justice Department, on the grounds that it was biased against minorities; many more Black than White applicants failed the test. The court decided that the NTE were valid for these purposes, because its scores reflected presence or absence of knowledge, there was no intent to discriminate, and an ETS validity study indicated that they were in compliance with Title VII of the Civil Rights Act of 1964. Opponents of this type of test continue to argue that certification should be based on a performance test, rather than a paper-and-pencil test.

CONCLUSION

As can be seen from the cases described above, there are many legal issues involved when tests are used as a mechanism for social control. In general, the issues revolve around the validity of the test for a specific use. However, specific legal decisions depend on "the particular circumstances surrounding a given case, the evidence brought to bear in the case and the opinion of the judge and jury involved" (Nitko, p.43).

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